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PAGE 01 NEW DE 10851 111512Z

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 561

INFO AMEMBASSY ISLAMABAD

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

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EO 11652: NA

TAGS: PFOR, PINT, IN

SUBJ: MRS GANDHI'S SUPREME COURT CASE

1. A FIVE JUDGE CONSTITUTION BENCH OF THE SUPREME COURT

HEARD ARGUMENTS FROM MRS GANDHI'S AND RAJ NARAIN'S LAWYERS FOR FIFTY MINUTES TODAY BEFORE ADJOURNING UNTIL AUGUST 25.

2. RAJ NARAIN'S COUNSEL, SHANTI BHUSHAN, ASSERTED THE THIRTY-NINTH AMENDMENT TO THE CONSTITUTION (PASSED TO EXONERATE MRS GANDHI. (SEE NEW DELHI 10782) IS ITSELF UNCONSTITUTIONAL UNDER A JUNE 3, 1973 SUPREME COURT DECISION REGARDING PARLIAMENT'S POWER TO AMEND THE FUNDAMENTAL RIGHTS. IN THAT DECISION A SPECIAL BENCH OF THE COURT RULED SEVEN TO SIX THAT THE CONSTITUTION INVESTS PARLIAMENT WITH THE RIGHT TO ALTER OR ABROGATE THE FUNDAMENTAL RIGHTS IN THE CONSTITUTION, NINE OF THE JUSTICES INVOLVED IN THE CASE, HOWEVER, HELD THAT THE LIMITED OFFICIAL USE

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CONSTITUTIONS "ARTICLE 368 (ON AMENDING THE CONSTITUTION)

DID NOT ENABLE PARLIAMENT TO ALTER THE BASIC STRUCTURE OR FRAMEWORK OF THE CONSTITUTIONAL." SPEAKING TO REPORTERS AFTER THE HEARING, BHUSHAN SAID HE WILL ARGUE THAT THIS MAJORITY STATEMENT NULLIFIES THE THIRTY-NINTH AMENDMENT ON THE GROUNDS THAT IT VIOLATES THIS COURT STRICTURE.

3. BHUSHAN'S ALLEGATION MAY POSTPONE A FINAL DISPOSAL OF MRS GANDHI'S COURT CASE. IT WILL NOT ALTER A FINAL JUDGEMENT THAT THE CASE IS BEYOND THE COURTS PURVIEW. THE FIVE MAN BENCH INCLUDES THE FOUR JUDGES ON THE COURT HELD TO BE MOST "COMMITTED" TO MRS GANDHI. IF NEED BE, PARLIAMENT CAN LEGISLATE AWAY BHUSHAN'S PROTEST. BHUSHAN HIMSELF ADMITTED TO REPORTERS THAT MRS GANDHI'S CASE WILL LAPSE IF HIS PRESENT ARGUMENTS FAIL.
SAXBE

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